IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9710 of 1999

For Approval and Signature:
Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ISHWARBHAI RANCHHODBHAI RANDERI

Versus

POLICE COMMISSIONER

Appearance:
MR RD GAGDEKAR for Petitioner
MR SJ DAVE, AGP for Respondent No. 1-State.
RULE SERVED for Respondent No. 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/07/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 14-9-99 passed by the Police Commissioner, Surat, and he has been declared as dangerous person.

2. It is a settled principles of law that in order to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive

materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Commissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. Learned counsel for the petitioner has restricted his arguments only on the point that there is delay in deciding the representation. As per the argument of learned counsel for the petitioner, mother of the petitioner made three representations dated 18-10-99, 20-10-99 and 1-11-99 to the detaining authority and the mother of the petitioner also received three communications dated 19-11-99 regarding her representation wherein in first communication it is specifically mentioned by the detaining authority that they have received the representation dated 18-10-99 on 18-10-99 and the same was sent by the detaining authority to the State authority on the ground that the detention order has been approved by the Government on 15-9-99, but it is not mentioned in the communication that on which date the detaining authority sent the representation dated 18-10-99 to the State authority. However, the fact remains that the communication has been sent by the detaining authority to the mother of the petitioner after a period of one month and petitioner has categorically mentioned in the petition in ground (k) that three representations have been sent by the mother of the petitioner, but till today, the authority has not decided the same and not communicated the same. Hence, three representations made by the mother of the petitioner remained undecided. Even the detaining authority sent communication to the mother of the petitioner after a period of one month. Therefore, there is delay in deciding the representations made by the mother of the petitioner for which learned counsel for the petitioner has relied upon a decision reported in upon a decision reported in AIR 1999 SC 884 Rajanmal v. State of Tamil Nadu and another ,wherein it is held as under ;

> "The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such

> delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. "

4. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 14-9-99 passed against the detenu is hereby quashed. The detenu Ishwarbhai Ranchhodbhai Randeri is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.Dholakia, J.)

*mithabhai